

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRAYLOR BROS., INC.,

Plaintiff,

v.

SAN DIEGO UNIFIED PORT
DISTRICT,

Defendant.

AND RELATED THIRD-PARTY
ACTION.

Civil No. 08-cv-1019-L(WVG)

ORDER:

**(1) GRANTING PLAINTIFF’S MOTION
TO FILE DOCUMENTS UNDER SEAL
[DOC. 110],**

**(2) DENYING PLAINTIFF’S *EX PARTE*
APPLICATION FOR LEAVE TO FILE
EXCESS PAGES [DOC. 106], AND**

**(3) TERMINATING DEFENDANT’S *EX
PARTE* APPLICATION TO CONTINUE
HEARING DATE AS MOOT [DOC. 115]**

Pending before the Court are three requests related to Plaintiff Traylor Bros. Inc.’s anticipated motion for partial summary judgment against Defendant / Third-Party Plaintiff San Diego Unified Port District (“Port”). These requests include (1) Traylor Bros.’ motion to file documents under seal, (2) Traylor Bros.’ *ex parte* application seeking leave to file excess pages for its anticipated motion, and (3) the Port’s *ex parte* application to continue the hearing date reserved by Traylor Bros. for its anticipated motion. To date, Traylor Bros.’ motion to file documents under seal remains unopposed. Both *ex parte* applications, however, are opposed.

For the following reasons, the Court **GRANTS** Traylor Bros.’ motion to file documents under seal, **DENIES** Traylor Bros.’ *ex parte* application, and **TERMINATES AS MOOT** the Port’s *ex parte* application.

1 **I. ANALYSIS**

2 This case arises from a public-works construction project performed by Traylor Bros. for
 3 the Port. The project involved the demolition and removal of existing piers and launchway
 4 structures and other debris, and the dredging and disposal of contaminated bay sediment in
 5 preparation for the installation of an engineered cap system. According to Traylor Bros., the
 6 anticipated motion for partial summary judgment seeks to establish (1) that its interpretation of
 7 the contract documents relating to the Dredging & Capping Claim is reasonable such that, as a
 8 matter of law, the contract documents are at best ambiguous and must be construed against the
 9 Port, and (2) the Port's liability for the extra time incurred and extra work performed by Traylor
 10 Bros.

11
 12 **A. Traylor Bros.' Motion to File Documents Under Seal**

13 “[A] ‘compelling reasons’ standard applies to most judicial records.” *Pintos*, 605 F.3d at
 14 677-78. A party seeking to seal judicial records must show that “compelling reasons supported
 15 by specific factual findings . . . outweigh the general history of access and the public policies
 16 favoring disclosure.” *Id.* at 678 (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,
 17 1178-79 (9th Cir. 2006)) (internal quotation marks omitted). This standard derives from the
 18 common-law right “to inspect and copy public records and documents, including judicial records
 19 and documents.” *Id.*; see also *Nixon v. Warner Comm’n’s, Inc.*, 435 U.S. 589, 597 (1978). As
 20 long as the particular document is not one that is “traditionally kept secret,” the presumption of
 21 access “extends to pretrial documents filed in civil cases, including materials submitted in
 22 connection with motions for summary judgment.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
 23 F.3d 1122, 1134 (9th Cir. 2003). However, this right to access is not absolute. “[C]ompelling
 24 reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court
 25 records exist when such ‘court files might have become a vehicle for improper purposes,’ such
 26 as the use of records to gratify private spite, promote public scandal, circulate libelous
 27 statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1178-79 (citing *Nixon*, 435 U.S. at
 28 678). But “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,

1 incrimination, or exposure to further litigation will not, without more, compel the court to seal its
2 records.” *Id.* (citing *Foltz*, 331 F.3d at 1136).

3 Traylor Bros. seeks to file under seal the conformed estimate of Dutra Dredging Company
4 (“Dutra”), the only other contractor to submit a bid for the subject project, in support of its
5 anticipated motion for partial summary judgment. It indicates that the parties obtained Dutra’s
6 conformed estimate during discovery process. (Pl.’s Mot. to Seal 1:27–29.) Traylor Bros. also
7 contends that the conformed estimate “contains the [Dutra’s] trade secrets, proprietary
8 information, and private financial information, which, if made available to the public, would
9 irreparably impact Dutra’s future ability to successfully bid public works projects.” (*Id.* at
10 1:28–2:2, 4:1–8.) It supports its motion with the declaration of its counsel, Catherine A. Hanna.

11 Traylor Bros. argues that these circumstances satisfy the Ninth Circuit’s compelling-
12 reasons standard. (Pl.’s Mot. to Seal 3:19–4:12.) The Court agrees.¹ Exposing Dutra’s
13 conformed estimate to the public has the potential to greatly disadvantage it in the future
14 commercial ventures. Furthermore, Civil Local Rule 7.1(f.3.c) expressly provides that “[i]f an
15 opposing party fails to file papers in the manner required by Local Rule 7.1.e.2, that failure may
16 constitute a consent to the granting of that motion or other ruling by the court.” Thus, the Court
17 considers the Port’s failure to respond to the motion as consent to granting it.

18 Accordingly, the Court **GRANTS** Traylor Bros.’ motion to file Dutra’s conformed
19 estimate under seal. (Doc. 110.)

20

21 **B. Traylor Bros.’ *Ex Parte* Application for Leave to File Excess Pages**

22 Civil Local Rule 7.1(h) provides that “[b]riefs or memoranda in support of or in
23 opposition to all motions noticed for the same motion day must not exceed twenty-five (25)
24 pages in length for all such motions without leave of the judge who will hear the motion.”
25 Furthermore, “[n]o reply memorandum will exceed ten (10) pages without leave of the judge.”

26
27 ¹ The Court also notes that the less burdensome “good cause” standard may apply to the
28 documents produced here, which Traylor Bros. nonetheless also satisfies. *See Pintos*, 605 F.3d
at 678.

1 Civil L.R. 7.1(h). Given the district court’s inherent power to control their dockets, whether to
2 grant leave to exceed the page limits set forth in the Civil Local Rules appears to be at the full
3 discretion of the Court. *See United States v. W.R. Grace*, 526 F.3d 499, 509 (9th Cir. 2008) (en
4 banc) (noting also that “judges exercise substantial discretion over what happens inside the
5 courtroom”).

6 Here, Traylor Bros. requests leave to file a 60-page motion—35 pages in excess of the
7 page limit imposed by the Civil Local Rules. Traylor Bros. indicates that despite its “best and
8 vigorous efforts,” it “believes that these pages are necessary so that the relevant facts,
9 particularly the pertinent excerpts from the voluminous Contract Documents, can be properly
10 framed in a single document without the added burden to the Court of having to cross-reference
11 facts set forth in separate documents.” (Pl.’s Excess Pages *Ex Parte* Appl. 2:3–9.) The Port and
12 Third-Party Defendant Anchor Environmental, LLC (“Anchor”)² argue that Traylor Bros. fails to
13 demonstrate good cause in support of its request. The Court is inclined to agree with the Port
14 and Anchor.

15 With its *ex parte* application, Traylor Bros. also submitted a copy of the 60-page partial-
16 summary-judgment motion that it intends to file. A cursory review of the anticipated motion
17 shows that a substantial portion of the motion—just under 40 pages—is allocated to providing
18 background information. However, if Traylor Bros. justifies the need to exceed the page limits
19 in order to insert pertinent contract excerpts, it fails to show good cause that the additional pages
20 are necessary. By the Court’s assessment, contract excerpts amount to no more than a few extra
21 pages. Moreover, viewing a particular portion of a contract out of context may deprive the
22 Court, as well as the Port, of important insight into the meaning of that portion. Regardless,
23 exceeding the 25-page limit imposed by the Civil Local Rules by 35 pages is excessive.
24 Therefore, the Court will not exercise its discretion to grant Traylor Bros. leave to file excess
25 pages.

26
27 ² Anchor jointly opposes Traylor Bros.’ *ex parte* application. (Pl.’s Excess Pages *Ex*
28 *Parte* Appl. 2:3–5.) Anchor also joins the Port in its *ex parte* application to continue the hearing
date for Traylor Bros.’ anticipated motion. (Notice of Joinder [Doc. 117].)

1 Accordingly, the Court **DENIES** Traylor Bros.' *ex parte* application for leave to file
2 excess pages. (Doc. 106.) Furthermore, given that the reserved hearing date for Traylor Bros.'
3 anticipated motion is no longer in compliance with this district's 28-Day Rule under Civil Local
4 Rule 7.1(e.1), the Court **TERMINATES AS MOOT** the Port and Anchor's *ex parte* application
5 to continue the hearing date. (Doc. 115.)
6

7 **II. CONCLUSION & ORDER**

8 In light of the foregoing, the Court hereby:

- 9 (1) **GRANTS** Traylor Bros.' motion to file documents under seal (Doc. 110),
- 10 (2) **DENIES** Traylor Bros.' *ex parte* application for leave to file excess pages (Doc.
11 106), and
- 12 (3) **TERMINATES AS MOOT** the Port and Anchor's *ex parte* application to
13 continue the hearing date reserved for Traylor Bros.' anticipated motion (Doc.
14 115).

15 When Traylor Bros. is prepared to file their motion, it may obtain a new hearing date
16 from chambers. After reserving the hearing date, Traylor Bros. must be ready to file its motion
17 within 3 days. Furthermore, in accordance with the Court's Standing Order for Civil Cases,
18 telephone calls to chambers should be limited to obtaining hearing dates for motions or
19 "unavoidable circumstances." With that in mind, the parties are warned to exercise their sound
20 judgment when calling chambers.

21 **IT IS SO ORDERED.**

22
23 DATED: March 26, 2011

24 
25 M. James Lorenz
26 United States District Court Judge
27
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